

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROBIN FOUGHT)	
Claimant)	
VS.)	
)	Docket No. 192,403
CARROL BALL TRANSPORT, INC.)	
Respondent)	
Uninsured)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant and the Workers Compensation Fund appealed from an August 13, 1997, Order entered by Administrative Law Judge Steven J. Howard.

APPEARANCES

Claimant appeared by his attorney, Chris Miller of Lawrence, Kansas. Respondent appeared by its attorney, Laurence M. Jarvis of Kansas City, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Bruce D. Mayfield of Overland Park, Kansas.

RECORD AND STIPULATIONS

The Appeals Board considered the record listed in the Order.

ISSUES

The Administrative Law Judge denied claimant an award of civil penalties, interest, and attorney fees finding the Kansas Workers Compensation Act does not provide for such an award against the Workers Compensation Fund under the circumstances present in this case. The claimant seeks Appeals Board review of the denial of those benefits and penalties. The Kansas Workers Compensation Fund (Fund) appealed the determination that the Fund should pay the benefits previously awarded claimant due to the inability of the

uninsured respondent to pay. The Fund's appeal of this issue was subsequently dismissed after respondent filed for bankruptcy.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire record and having considered the briefs and arguments of the parties, the Appeals Board finds that the Order entered by the Administrative Law Judge should be affirmed.

The findings of fact and conclusions of law enumerated in the Order by the Administrative Law Judge are found to be accurate and are adopted by the Appeals Board. The Appeals Board agrees with the analysis of the record and the applicable law by the Administrative Law Judge regarding the claimant's request for civil penalties, interest on the compensation benefits, and attorney fees. It would not be appropriate to award civil penalties under K.S.A. 44-512a against an uninsured and insolvent respondent and the Act does not provide for penalties against the Fund. The same is true concerning claimant's requests for interest under K.S.A. 44-512b, which is also considered a penalty, and attorney fees under K.S.A. 44-536(g).

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order entered by Administrative Law Judge Steven J. Howard, dated August 13, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Chris Miller, Lawrence, KS
Laurence M. Jarvis, Kansas City, KS
Bruce D. Mayfield, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director